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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERVIN MIDDLETON,)	Case No.: 2:12-cv-01449-LRH-CWH
)	
Plaintiff,)	Honorable Larry R. Hicks
)	
v.)	Removed from the Justice Court, Las Vegas
)	Township, Clark County, Nevada
CONVERGENT OUTSOURCING, INC.,)	Case No. 12A-002220
)	
Defendant.)	ANSWER TO COMPLAINT
)	
)	JURY DEMAND

Defendant Convergent Outsourcing, Inc., by and through its counsel of record, answers the plaintiff's complaint for damages as follows:

ANSWER TO COMPLAINT

1. Answering paragraph 1 of the complaint, defendant admits that plaintiff purports to allege violations of the Telephone Consumer Protection Act ("TCPA") and the Fair Credit Reporting Act ("FCRA") but denies the allegations in all other respects.

AFFIRMATIVE DEFENSES

Defendant Convergent Outsourcing, Inc. asserts the following affirmative defenses to plaintiff's Complaint and reserves the right to amend or supplement these defenses as further information becomes available through discovery.

FIRST AFFIRMATIVE DEFENSE

Plaintiff consented to the acts and events set forth in the complaint.

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SECOND AFFIRMATIVE DEFENSE

The alleged claims in the complaint, and each of them, are barred by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

The complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

The alleged claims in the complaint, and each of them, are uncertain, ambiguous and/or unintelligible.

FIFTH AFFIRMATIVE DEFENSE

The complaint, and each and every cause of action alleged therein, is barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has unreasonably delayed in bringing this action to the prejudice of this answering defendant and is therefore barred from bringing this action by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that plaintiff lacks standing and/or capacity to either bring or maintain this action, or to obtain the relief sought.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has failed to name all necessary and indispensable parties to this action.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to privilege, absolute or qualified, including, but not limited to, the litigation privilege and/or the common interest privilege.

ELEVENTH AFFIRMATIVE DEFENSE

The facts and circumstances underlying plaintiff's state law claims are preempted in whole or in part by federal law.

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TWELFTH AFFIRMATIVE DEFENSE

No act or omission of this answering defendant was a substantial factor in bringing about the damages alleged, nor was any act or omission of this answering defendant a contributing cause thereof. Any alleged acts or omissions of this answering defendant were superseded by the acts or omissions of others, including plaintiff or other third parties named or not named as in the complaint, which were the independent, intervening and proximate cause of the damage or loss allegedly sustained by plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff assisted, consulted, directed, ordered, approved and/or ratified this answering defendant's conduct, and is therefore estopped from claiming any damages, if any, there were.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, in the event it is held liable to plaintiff, which liability is expressly denied, and any co-defendants or cross-defendants are likewise held liable, this defendant is entitled to a percentage contribution of the total liability from said co-defendants and cross-defendants in accordance with the principles of equitable indemnity and comparative contribution.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff and/or other third parties, their agents and employees, and each of them, were actively or passively negligent in and about the matters alleged in the complaint, and said negligence proximately and concurrently contributed to the damages described therein and bars any recovery to the extent thereof.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because defendant, pursuant to 47 U.S.C. § 227(c)(5), has established and implemented, with due care, reasonable practices and procedures to effectively prevent any telephone solicitations in violation of TCPA.

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SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because any alleged actions by defendant were taken in good faith; alleged violations, if any, were unintentional and resulted despite the existence of procedures reasonably adopted to avoid any violations of the TCPA.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred as to any alleged cell phone calls received by plaintiff because plaintiff was not charged for the calls and uncharged calls are exempt from application of the TCPA.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because plaintiff does not possess a private right of action under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

TWENTIETH AFFIRMATIVE DEFENSE

The subject telephone system is not an "automatic telephone dialing system" under the TCPA because the telephone system does not use a "random or sequential number generator" to store or produce telephone numbers.

TWENTY-FIRST AFFIRMATIVE DEFENSE

All or part of the relief sought by plaintiff may be barred by illegality, fraud, prior material breach, and/or breach of the duty of good faith and fair dealing arising out of, but not limited to, plaintiff's fraudulent conduct and the providing of false information during negotiations and contracting for the underlying debt that is subject of the complaint in this action.

TWENTY-SECOND AFFIRMATIVE DEFENSE

When one accepts credit, such as the plaintiff, here, the plaintiff impliedly consents for the creditor, such as defendant, here, to take reasonable steps to pursue payment even though it may result in actual, though not actionable, invasion of privacy. In the debtor-creditor situation, the right of a debtor to privacy is subject to the right of a creditor to take reasonable steps to collect the debt.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant alleges that, as to each cause of action, although defendant denies that it committed or is responsible for any act or omission that could support the recovery of punitive damages in this action, if and to the extent any such act or omission is found, recovery of such punitive damages against defendant is unconstitutional under the United States Constitution, including: the Excessive Fines Clause of the Eighth Amendment, the Due Process Clause of the Fifth Amendment and Section One of the Fourteenth Amendment and other provisions of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, the defendant prays for judgment against plaintiff as follows:

1. That plaintiff takes nothing by virtue of his complaint.
2. That plaintiff's complaint be dismissed with prejudice.
3. For costs and disbursements incurred herein, including attorney's fees.
4. For such other relief as the court may deem appropriate.

DATED this 16th day of August, 2012.

Respectfully submitted,

GORDON & REES LLP

/s/ Craig J. Mariam

Craig J. Mariam

Attorneys for defendant Convergent Outsourcing, Inc.

DEMAND FOR JURY TRIAL

Pursuant to FRCP Rule 38, defendant hereby demands a jury trial on all issues so triable.

DATED this 16th day of August, 2012.

Respectfully submitted,

GORDON & REES LLP

/s/ Craig J. Mariam

Craig J. Mariam

Attorneys for defendant Convergent Outsourcing, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16th day of August, 2012, a copy of the foregoing **ANSWER TO COMPLAINT and JURY DEMAND** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

BY U.S. MAIL:

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